IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 408 of 2002

Sudhakar Baburao Mali(through jail)
r/o Bhagwatinagar Near Kaul
Karkhana Old Naigaon Road
Sinnar Dist. Nasik .Appellant

vs

The State of Maharashtra. .. Respondent

Mrs. Revati Mohite-Dere for appellant-appointed

Mrs. P.H. Kantharia, Addl.P.P. for the respondent.

CORAM:V.G.PALSHIKAR,Acg.C.J. ,&
NISHITA MHATRE, J.
DATE: AUGUST 23, 2006.

ORAL JUDGMENT:(Per Palshikar Acg.C.J.)

1. Being aggrieved by the judgment and order dated 13th July, 2001 passed by the Ist Adhoc Addl. Sessions Judge, Nasik in Sessions Case No.174 of 2000, convicting the appellant-accused under sections 302 and 498A of IPC and sentencing him to suffer imprisonment for life,, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal.

2. With the assistance of the learned counsel appearing on behalf of the appellant and the learned Addl. Public

Prosecutor we have perused the record, scrutinised the same and reappreciated the entire evidence on record. The prosecution case as disclosed by such scrutiny and reappreciation stated briefly is that the accused was married to the victim and according to the prosecution on 9th July 2000 he came to his wife, asked her to accompany him for a movie and during the intervals of that movie, came back to home along with his wife, bet her, poured kerosene on her and put her on fire. Thereafter the accused ran away.

3. According to the prosecution the victim thereafter doused the fire by engulfing herself in a quilt and thereafter straightway went to the hospital where on finding that she was suffering from burns, a medico case was given to the police. Police arrived at the hospital, verified from the doctors about the health of the victim and being told that she is in a position to give statement, her statement in the shape of dying declaration was recorded by a duly nominated official. In this dying declaration recorded by the official being Exh 9 the victim has stated that her husband took her for a movie, took her during the intervals, assaulted her and then after

pouring kerosene on her body, lighted her saree. She was engulfed by the fire. Nobody else was in the house and therefore she doused herself with the quilt and went to the hospital. She repeated this in her dying declaration that the fire was extinguished by nobody but she herself did it by covering herself in a quilt. This declaration Exh 9 carries a certificate of the doctor certifying that throughout the time when the recording of the dying declaration was going on, the victim was in conscious state of mind and body to give the declaration. It was on the basis of this declaration given by the victim that the first information report was also recorded. The first information report was recorded by a constable and has been proved which is at Exh 20. In this she has stated that she was taken to a movie by her husband and took her back during the intervals. While returning home the accused asked her as to whether she has any illicit relation with another man. Her denial enraged him and he bet her on the road, took her to his house and then in the house poured kerosene on her, set her on fire and then ran away from the house. Here she says that she extinguished the fire by engulfing herself in a quilt. Nobody came to her help for the vicinity. She stated that

she then ran towards the house of her mother Laxmibai, told her the fact and then her cousin Kacharu and her mother took her to the government hospital. This is directly contradictory to the statement made in her dying declaration Exh 9, where she said that no body assisted her and she came to the hospital directly. There is thus material change in her first information report and dying declaration.

4 The prosecution has examined P.W.5 Chandrabhaga who has a complete different version to depose. She states that around 8.30 p.m. When she with her family was watching television the wife of the accused i.e. the victim entered her house, shouted and according to the witness she was in almost naked condition except for panty and burnt blows. She was crying in pains and, therefore, the witness put a saree on her person and asked her to go. Accordingly the victim left the house of the witness and she does not know what happened thereafter. The witness, however, hastened to add that the victim was shouting that she has been put on fire by her husband who has ran away. The version given by this witness is entirely different than the one given by the victim in her dying declaration and both

are different from the version given by her in the first information report. In such circumstances it is not possible to come a certain conclusion that it was the accused who has put her on fire. There is no evidence to show that the couple was last seen together, that they went to a movie or that they came back. The allegation of the victim is that she was even beaten on the road. If that be so, evidence would have been available of persons deposing to that effect. Such evidence is also not forthcoming. In such circumstances the circumstantial evidence as is available on record is grossly insufficient to confirm the finding of guilt as recorded by the learned trial judge. The learned judge erred in holding the circumstances are enough to prove beyond reasonable doubt the guilt of the accused. In our opinion, this has resulted in gross injustice. Consequently the order impugned is liable to be set aside.

In the result, appeal succeeds and is allowed. The impugned order of conviction and sentence is set aside. The accused is liable to be released forthwith, if not otherwise required.